

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

LOUIE ALEXANDER,

Plaintiff,

-vs-

OPELIKA CITY BOARD OF EDUCATION,

Defendant.

Case No. 3:06-cv-498-WKW

**DEFENDANT OPELIKA CITY BOARD OF EDUCATION'S**  
**MOTION TO COMPEL**

COMES NOW the Defendant Opelika City Board of Education and, pursuant to Rule 37 of the *Federal Rules of Civil Procedure*, moves this Honorable Court to compel the Plaintiff to provide Initial Disclosures, respond to said Defendant's First Set of Interrogatories and Requests for Production and produce Plaintiff for deposition. As grounds for this motion, Defendant avers as follows:

1. According to the Report of Rule 26(f) Planning Meeting separately filed by counsel for Plaintiff on August 18, 2006, Initial Disclosures were due from Plaintiff on September 1, 2006.
2. Defendant propounded its First Set of Interrogatories and Requests for Production, which were sent by First Class United States Mail to Plaintiff's attorney on October 16, 2006. Additionally, Defendant has repeatedly requested to take Plaintiff's deposition to no avail. To date, Plaintiff's counsel has made no attempt whatsoever to contact the undersigned counsel regarding the Initial Disclosures<sup>1</sup>, the discovery requests nor the scheduling of Plaintiff's deposition.
3. Pursuant to Rules 33 and 34 of the *Federal Rules of Civil Procedure*, Plaintiff's responses to the discovery requests were due on or about November 17, 2006.
4. Counsel for Defendant, in an attempt to settle the discovery dispute with Plaintiff's counsel without court intervention, has repeatedly sent written correspondence seeking the past-due

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<sup>1</sup>Counsel for Plaintiff's failure to forward Initial Disclosures is especially troubling in light of the fact that Plaintiff's counsel accused the undersigned of misconduct when same proposed an Initial Disclosure date later than eventually submitted to the Court for approval.

Initial Disclosures, the outstanding discovery responses and/or a date to take Plaintiff's deposition. (See Composite Exhibit "1"-Letter dated January 16, 2007, Letter dated January 11, 2007, Email dated January 11, 2007, Letter dated January 4, 2007, Letter dated November 7, 2006, Letter dated October 24, 2006).

5. Again, as of the date of the filing of this motion, the responses still have not been provided to Defendant nor has counsel for the Plaintiff contacted the undersigned to indicate when said discovery will be forthcoming.

6. Defendant submits that the requests are seeking information which is discoverable and designed and reasonably calculated to lead to the discovery of relevant evidence.

7. Further, pursuant to the Uniform Scheduling Order entered by this Court on August 30, 2006, while the discovery deadline in this action does not run until July 9, 2007, Defendant is facing a dispositive motions deadline of March 26, 2007 and, therefore, must timely conduct discovery in order to comply with said deadline.

WHEREFORE, Defendant requests that this Honorable Court issue an order requiring and compelling the Plaintiff to respond to the outstanding discovery, present Plaintiff for deposition and issue sanctions against Plaintiff as the Court deems appropriate.

Respectfully submitted this 30<sup>th</sup> day of January 2007.

OPELIKA CITY BOARD OF  
EDUCATION, Defendant,

By: **/S/Elizabeth Brannen Carter**

James R. Seale (SEALJ3617)  
Elizabeth B. Carter (CARTE3272)  
HILL, HILL, CARTER,  
FRANCO, COLE & BLACK, P.C.  
Post Office Box 116  
Montgomery, Alabama 36101-0116  
(334) 834-7600  
(334) 263-5969 - fax  
E-mail: jrs@hillhillcarter.com  
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date electronically filed the foregoing *Defendant Opelika City Board of Education's Motion to Compel* with the Clerk of the Court for the United States District Court, for the Middle District of Alabama, using the CM/ECF system which will send notification of such filing to: Gregg L. Smith, Esquire, (greggsmith@bellsouth.net ) this the 30<sup>th</sup> day of January, 2007.

/S/ Elizabeth Brannen Carter

Of Counsel